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6 EDDIE LAMAR DUNBAR,

7
8 No. C 19-7703 WHA (PR)

9 Plaintiff,

10 **ORDER OF SERVICE**

11 v.
12 ALAMEDA COUNTY SHERIFF'S
13 OFFICE; CALIFORNIA FORENSIC
14 MEDICAL GROUP; ARAMARK
15 CORRECTIONAL SERVICES;
16 DEPUTY SMITH; DEPUTY M.
17 SIMON; SERGEANT J. CALEGARI;
DEPUTY A. PROCOPIO; DEPUTY
R. PEREIRA; DEPUTY
HELLFRICK; DEPUTY D. LEON,

18 Defendants.
19 _____ /

20 **INTRODUCTION**

21 Plaintiff, a California state prisoner, filed this pro se civil rights case under 42 U.S.C. §
22 1983 alleging that defendants violated his civil rights while he was housed at the Alameda
23 County Jail. The Complaint was dismissed with leave to amend, and plaintiff filed a First
24 Amended Complaint (“FAC”). For the reasons discussed below, the United States Marshall
25 shall serve certain defendants based upon plaintiff’s cognizable claims, while the claims against
26 other defendants are dismissed.

27 **ANALYSIS**

28 **A. STANDARD OF REVIEW**

Federal courts must engage in a preliminary screening of cases in which prisoners seek

1 redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C.
2 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims
3 which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek
4 monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro
5 se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699
6 (9th Cir. 1990).

7 Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the
8 claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the
9 statement need only ""give the defendant fair notice of what the . . . claim is and the grounds
10 upon which it rests."'" *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (citations omitted).
11 Although in order to state a claim a complaint "does not need detailed factual allegations, . . . a
12 plaintiff's obligation to provide the 'grounds of his 'entitle[ment] to relief' requires more than
13 labels and conclusions, and a formulaic recitation of the elements of a cause of action will not
14 do. . . . Factual allegations must be enough to raise a right to relief above the speculative
15 level." *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A
16 complaint must proffer "enough facts to state a claim for relief that is plausible on its face." *Id.*
17 at 1974.

18 To state a claim under 42 U.S.C. 1983, a plaintiff must allege two essential elements:
19 (1) that a right secured by the Constitution or laws of the United States was violated, and (2)
20 that the alleged deprivation was committed by a person acting under the color of state law.
21 *West v. Atkins*, 487 U.S. 42, 48 (1988).

22 **B. LEGAL CLAIMS**

23 Plaintiff's claims about the unsanitary conditions at the jail against defendants Jones,
24 Smith, Hellfrick, Simon, and Pereira, when liberally construed, state a cognizable claim for the
25 violation of his Fourteenth Amendment right to due process. His claim that defendant Hellfrick
26 retaliated against him for filing complaints, when liberally construed, states a cognizable claim
27 for the violation of his First Amendment right.

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1 Plaintiff's claim against defendant Jones for the destruction of property is not cognizable
2 because neither the negligent nor intentional deprivation of property states a due process claim
3 under § 1983 where, as alleged here, state law did not authorize the deprivation. *See Hudson v.*
4 *Palmer*, 468 U.S. 517, 533 (1984) (intentional destruction of inmate's property); *see also Parratt*
5 *v. Taylor*, 451 U.S. 527, 535-44 (1981) (state employee negligently lost prisoner's hobby kit).
6 The availability of an adequate state post-deprivation remedy, e.g., a state tort action, precludes
7 relief because it provides sufficient procedural due process. *See Zinermon v. Burch*, 494 U.S.
8 113, 128 (1990). California law provides such an adequate post-deprivation remedy. *See*
9 *Barnett v. Centoni*, 31 F.3d 813, 816-17 (9th Cir. 1994) (citing Cal. Gov't Code §§ 810-895).

10 The claims against defendant Leon for forgery, against defendants Procopio, Formosa,
11 and Calegari for improper handling of grievances, and about unsafe conditions on the yard not
12 connected to any named defendant are not properly joined to the other claims because they are
13 based upon distinct transactions and occurrences and are brought against different defendants.
14 *See* Fed. R. Civ. P. 18, 20. Such claims will be dismissed without prejudice to plaintiff bringing
15 them in a separate action.

16 Plaintiff names the following additional defendants: the California Forensic Medical
17 Group, the Alameda County Sheriff's Office, Aramark Correctional Services, and the Warden
18 and Deputy Sheriff of Santa Rita County Jail. Plaintiff makes no allegations against these
19 defendants in the FAC, and consequently he has not stated a cognizable claim for relief against
20 them.

21 CONCLUSION

22 For the reasons set out above, it is hereby ordered as follows:

23 1. The claims against defendants DeLeon, Procopio, Formosa, and Calegari, and the
24 claims about unsafe conditions on the jail yard, are **DISMISSED** without prejudice.

25 The claims against defendant Jones for deprivation of property, and the claims against the
26 California Forensic Medical Group, the Alameda County Sheriff's Office, Aramark Correctional
27 Services, and the Warden of Santa Rita County Jail are **DISMISSED**.

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1 2. The clerk shall issue summons and the United States Marshal shall serve, without
2 prepayment of fees, a copy of the First Amended Complaint with all attachments thereto, and a
3 copy of this order upon defendants **Deputy Smith, Deputy M. Simon, Deputy R. Pereira,**
4 **Deputy K. Jones, and Deputy Hellfrick at the Santa Rita County Jail in Santa Rita,**
5 **California.** A courtesy copy of the First Amended Complaint with attachments and this order
6 shall also be mailed to the Alameda County Counsel's Office.

7 2. Defendants **shall** file an answer in accordance with the Federal Rules of Civil
8 Procedure.

9 3. In order to expedite the resolution of this case:

10 a. No later than **91 days** from the date this order is filed, defendants shall file a
11 motion for summary judgment or other dispositive motion. If defendants are of the opinion that
12 this case cannot be resolved by summary judgment, they shall so inform the court prior to the
13 date the summary judgment motion is due. All papers filed with the court shall be promptly
14 served on the plaintiff.

15 b. Plaintiff's opposition to the dispositive motion, if any, shall be filed with the
16 court and served upon defendants no later than **28 days** from the date of service of the motion.
17 Plaintiff must read the attached page headed "NOTICE -- WARNING," which is provided to
18 him pursuant to *Rand v. Rowland*, 154 F.3d 952, 953-954 (9th Cir. 1998) (en banc), and *Klingele*
19 *v. Eikenberry*, 849 F.2d 409, 411-12 (9th Cir. 1988).

20 c. Defendants **shall** file a reply brief no later than **14 days** after the date of
21 service of the opposition.

22 d. The motion shall be deemed submitted as of the date the reply brief is due. No
23 hearing will be held on the motion unless the court so orders at a later date.

24 e. Along with his motion, defendants shall file proof that they served plaintiff the
25 *Rand* warning at the same time they served him with their motion. Failure to do so will result in
26 the summary dismissal of their motion.

27 4. All communications by the plaintiff with the court must be served on defendants, or
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For the Northern District of California

1 defendants' counsel once counsel has been designated, by mailing a true copy of the document to
2 defendants or their counsel.

3 5. Discovery may be taken in accordance with the Federal Rules of Civil Procedure. No
4 further court order under Federal Rule of Civil Procedure 30(a)(2) or Local Rule 16-1 is required
5 before the parties may conduct discovery.

6 Plaintiff is reminded that state prisoners inmates may review all non-confidential material
7 in their medical and central files, pursuant to *In re Olson*, 37 Cal. App. 3d 783 (Cal. Ct. App.
8 1974); 15 California Code of Regulations § 3370; and the CDCR's Department Operations
9 Manual §§ 13030.4, 13030.16, 13030.16.1-13030.16.3, 13030.21, and 71010.11.1. Requests to
10 review these files or for copies of materials in them must be made directly to prison officials, not
11 to the court.

12 Plaintiff may also use any applicable jail procedures to request copies of (or the
13 opportunity to review) any reports, medical records, or other records maintained by jail officials
14 that are relevant to the claims found cognizable in this Order. Such requests must be made
15 directly to jail officials, not to the court.

16 6. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the court
17 informed of any change of address and must comply with the court's orders in a timely fashion.
18 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to
19 Federal Rule of Civil Procedure 41(b).

20 IT IS SO ORDERED.

21 Dated: May 15, 2020.

22 
23 WILLIAM ALSUP
24 UNITED STATES DISTRICT JUDGE

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NOTICE -- WARNING (SUMMARY JUDGMENT)

If defendants move for summary judgment, they are seeking to have your case dismissed. A motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your case.

Rule 56 tells you what you must do in order to oppose a motion for summary judgment. Generally, summary judgment must be granted when there is no genuine issue of material fact--that is, if there is no real dispute about any fact that would affect the result of your case, the party who asked for summary judgment is entitled to judgment as a matter of law, which will end your case. When a party you are suing makes a motion for summary judgment that is properly supported by declarations (or other sworn testimony), you cannot simply rely on what your complaint says. Instead, you must set out specific facts in declarations, depositions, answers to interrogatories, or authenticated documents, as provided in [current Rule 56(c)], that contradict the facts shown in the defendant's declarations and documents and show that there is a genuine issue of material fact for trial. If you do not submit your own evidence in opposition, summary judgment, if appropriate, may be entered against you. If summary judgment is granted, your case will be dismissed and there will be no trial.